

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

DONALD E. MORISKY,

Plaintiff,

v.

MMAS RESEARCH, LLC, a
Washington limited liability company,
STEVEN TRUBOW, an individual,
POLINA FEILBACH, an individual,
RODNEY WATKINS, an individual,
DUSTIN MACHI, an individual, MMAS
Research Italy S.R.L. an Italian
company, and MMAS Research
France, SAS a French company,

Defendants.

NO. 2:21-CV-01301-DWC

DECLARATION OF STEVE
TRUBOW IN SUPPORT OF
DEFENDANTS' RESPONSE

DECLARATION OF STEVE TRUBOW

1 I STEVE TRUBOW, under penalty of perjury under the laws of the
2 United States state as follows:

3 1. I declare and may testify to the truth of the following facts within
4 my personal knowledge.
5

6 2. In response to Plaintiff's discovery requests and in compliance
7 with Court Orders, I worked in conjunction with my attorneys to provide
8 responsive material and information.
9

10 **Background to Defendants Responses**

11 3. In November 2023, according to Court directives, I assisted my
12 attorneys to comply with Court Orders to provide responses and documents
13 that were reorganized, and Bates numbered according to what was in
14 Defendants possession and control. These may be accessed in the
15 Document Production at Bates Stamped Sets and Index.
16

17 4. Some of Plaintiff's document requests could not be provided
18 because they were simply not in my possession, having been prepared and
19 maintained by joint counsel, other third parties, and Plaintiff himself.
20

21 **Plaintiff's RFP 144-148**

22 5. In Christopher Austin's Declaration on page 3 or 6, he noted the
23 Defendant Production (RFP 144 – 148) contains a list of 212 licensees,
24 which he attached to Declaration as Exhibit 5.
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1 6. That list of 212 Morisky Widget license agreements comes from
2 the CR2A Exhibit 4, which was executed in December 2020. A large majority
3 of the 212 Morisky Widget license agreements in the CR2A were signed and
4 executed by Plaintiff himself. See Exhibit 10.

5
6 7. Plaintiff had access to detailed Morisky Widget licensing
7 information as early as January 4, 2021, through his counsel Kenneth Gross.
8 See attached January 4, 2021, email correspondence between Dustin Machi
9 and Joint Counsel Kenneth Gross. See Exhibit 8.
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13 8. In the January 4, 2021, email from Dustin Machi to Counsel Gross,
14 Machi attached a data file containing over 200 Morisky Widget licenses that
15 were executed before the CR2A was signed with detailed contact information
16 for thousands of trained and certified administrators and users of the Morisky
17 Widget licenses. See Exhibit 9.
18

19
20 9. In that same email from Dustin Machi to Kenneth Gross, Plaintiff
21 also received a full unredacted copy of the Morisky Widget source code. See
22 Exhibit 8.
23

24 10. In DKT 233, page 4, in Plaintiff's Renewed Motion for Sanctions,
25 Plaintiff wrote, **"To date, Defendants have never produced an unredacted**
26 **version of the Morisky Widget source code.** When in fact, Plaintiff had
27
28

1 access to an unredacted copy of the Morisky Widget source code as early as
2 January 4, 2021, through his counsel Kenneth Gross.

3
4 **Plaintiff's Request for Morisky Widget License Agreements**

5 **Not Signed by Dr. Morisky**

6
7 11. In Christopher Austin's declaration page 4, He declared," I have
8 confirmed that none of the agreements involving the Widget contained in the
9 November 2023 Production include agreements excluding Dr. Morisky. "

10
11 12. To the Contrary, in Defendants November 2023 Production, there
12 were three Novartis Morisky Widget agreements that excluded Dr. Morisky
13 after the execution of the CR2A. These are namely the RFP documents for
14 Novartis S Korea, Italy, and Argentina. All three include agreements
15 excluding Dr. Morisky.

16
17 13. It is pertinent to discuss the reasons that Dr Morisky did not sign
18 Morisky Widget license agreements for Novartis S Korea, Italy, and
19 Argentina.
20

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23
24 14. When the CR2A was executed in December 2020, there were
25 three perpetual Novartis Morisky Widget licenses listed, Exhibit 4, pages 29-
26 33. See Exhibit 10.
27
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1 15. These included Widget licenses for Novartis Germany, Italy, S.
2 Korea, and Argentina.

3 16. None of the Novartis Widget licenses were subject to infringement
4 claims in the CR2A Exhibit 3 list of infringers, page16-28. See Exhibit 10.

5 17. In a communication by Plaintiff (Document RFP 000289), he
6 informed Novartis S Korea, joint representation lawyer, Peter Hoeller, and
7 Christopher Austin on 03/14/2022 that the CR2A stipulates the return of the
8 Morisky Widget and Widget licenses by September 2021. Plaintiff claims that
9 the Morisky Widget will be phased out completely by September 2021 and
10 replaced with his own MMAR Software Platform. Plaintiff admits this is not an
11 infringement issue but a licensing issue, and that Plaintiff owns the Morisky
12 Widget and the Morisky Widget licenses. See Exhibit 1

13 **MMAS Research and Novartis Korea Addendum**

14 18. To resolve the false claims of ownership of the Novartis S Korea
15 Morisky Widget license raised by Plaintiff, MMAS Research LLC and Novartis
16 S Korea executed an Addendum on May 1, 2022, that did not include Plaintiff
17 Donald Morisky. (See Documents RFP 000283-000287)

18 19. That Addendum (RFP 000 283-287) MMAS Research LLC
19 represented and warranted that MMAS Research is the rightful owner of all
20 IP rights in relation to the Morisky Widget. MMAS Research LLC indemnified
21 and held Novartis S Korea harmless from any and all claims, losses, and
22

1 damages that they may suffer due to any type of claims raised by Donald
2 Morisky or MMAR LLC in connection with the Morisky Widget license. See
3 Exhibit 2
4

5
6
7 **RFP 000290- 000295 Novartis Germany/Argentina Morisky Widget**
8 **Agreements including Plaintiff and Excluding Plaintiff.**
9

10 20. RFP 000290-293 is a June 2021, Morisky Widget licensing
11 agreement between Novartis Argentina, Donald Morisky and MMAS
12 Research LLC. Novartis Argentina agreed to pay Morisky and MMAS
13 Research 17,500 euros (\$19,736.50) to rescore and recode 730 MMAS-8
14 tests in the Morisky Widget performed by Licensor's representative, Mr.
15 Steve Trubow. See Exhibit 3.
16

17 21. Even though Plaintiff Morisky signed the Addendum and received
18 \$5950.56, he informed Novartis that he would not allow Steve Trubow or
19 MMAS Research LLC to rescore and recode the MMAS-8 tests as he agreed
20 in the Addendum, instead insisting that Novartis Argentina use his own
21 MMAR platform to rescore and recode MMAS-8 tests.
22

23 22. RFP 000294-295 is an Amendment to the June 15, 2021, Morisky
24 Widget Addendum signed and executed by Plaintiff Donald Morisky with
25 MMAS Research and Novartis. See Exhibit 3.
26
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1 23. Plaintiff, Donald Morisky, did not sign the Amendment. It was only
2 signed by Novartis and MMAS Research LLC.

3 24. The Amendment states that MMAS agreed to indemnify, defend,
4 and hold Novartis harmless and each of its officers, employees,
5 representatives, agents, contractors, successors and assigns against all
6 losses, damages, liabilities, charges, judgements, costs and expenses
7 arising out of or in connection with any claim of any third party, including but
8 not limited to Mr. Donald Morisky, for infringement of their intellectual
9 property rights or any other right arising from or connected with the
10 Agreement and/or the performance of this Amendment. See Exhibit 3.
11

12 25. RFP 000275- 000276 July 29,2022, is a letter from Novartis Italy
13 stating that over the past few months we learned via Donald Morisky website
14 (Predatory Pricing from Steve Trubow (moriskyscale.com)) that (MMAS
15 Research/Trubow) does not have any rights to use the Morisky Widget
16 (These circumstances were directly confirmed by Donald Morisky) See
17 Exhibit 4.
18

19 **RFP 000280- 000283 MAY 2023 ADDENDUM NOVARTIS**
20 **ITALY OPIS MORISKY WIDGET LICENSE WITH INDEMNIFICATION**
21

22 26. RFP 000289-000283 is a settlement agreement between Novartis
23 Italy and MMAS Research LLC that was NOT signed by Donald Morisky. In
24 the Settlement Agreement it reviews the attempts by Morisky and his
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1 attorney Christopher Austin to convince Novartis that MMAS Research LLC
2 did not own the Morisky Widget copyright or the Novartis license.¹

3
4 27. MMAS Research LLC was required to indemnify Novartis from all
5 claims from Donald Morisky against claims that Novartis were infringing on
6 Plaintiff's intellectual property by using the Morisky Widget in a breast cancer
7 study. See. Exhibit 4.
8

9 **Janssen Addendum to their 2019 perpetual Morisky Widget**
10 **License**
11

12 28. Although Plaintiff's Motion asserts a claim of no prior knowledge of
13 the Janssen Addendum. Plaintiff's emails illustrate the opposite. Plaintiff had
14 firsthand personal knowledge of the need for the Janssen Addendum and
15 had agreed to help execute it in June 2021.
16

17 29. The first such email (RFP 000309) is from joint representation
18 lawyer Peter Holler to Donald Morisky and Steven Trubow. In this email
19 Hoeller informs Morisky that "Steve and I are working out a statement of work
20 to service a Widget license for Janssen in Tokyo. The work needed requires
21 in person re-scoring of test results, certification, and a possible corrigendum
22
23

24 ¹ RFP 000277- 000278 are two (2) January 26, 2021, emails from Steven Trubow to Christopher
25 Austin and Kenneth Gross and from OPIS/Novartis Italy to MMAS Research that explained that
26 MMAS Research LLC had daily responsibilities under the 2017 OPIS Novartis Morisky Widget
27 license to service these licensees. In these emails, Steve Trubow explained to Plaintiff's attorney
28 Christopher Austin that that the Morisky family, Don, Susan and Phillip are not trained or certified
on the Morisky Widget and will not be able to do service Morisky Widget licensees for a long time. See
Exhibit 4

1 for an article (if the original results were incorrect). Did you want to
2 participate in this? We can discuss it over the phone, call or web meeting if
3 so. Just let me know, and I can set something up between you, me, and
4 Steve." See Exhibit 5.

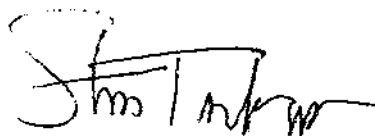
6 30. A second email (RFP 000309) on June 16, 2021, was from
7 Donald Morisky to his lawyer Hoeller and ccd Trubow and his lawyer
8 Christopher Austin. Plaintiff Morisky wrote, "yes, Peter, I will participate in all
9 MMAS Licensing including training and travel. Please provide me with the
10 article that needs to be reviewed in preparation of an Erratum or
11 Corrigendum. Thank you for the clarification you will provide. (FYI, I speak
12 fluent Japanese). Best, Don." See Exhibit 5.

15 As stated above, Defendants are justified in not providing superfluous
16 discovery responses of documents, and information that are within Plaintiff
17 knowledge and/or was a party to the agreement and had access through his
18 lawyers or other third parties.

21 These matters have been equally accessible by Plaintiff. Defendants
22 should not be sanctioned for not providing discovery on what Plaintiff has had
23 equal access.

25 Executed at Petaluma California

26 Dated: 8/6/2024

27 

28 /s/ Steve Trubow